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SENATE BILL 681

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Gerald P. Ortiz y Pino

AN ACT

RELATING TO THE MINIMUM WAGE; REMOVING EXCEPTIONS TO THE
MINIMUM WAGE ACT; REPEALING SECTIONS OF THE MINIMUM WAGE ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 50-4-21 NMSA 1978 (being Laws 1955,
Chapter 200, Section 2, as amended) is amended to read:

"50-4-21. DEFINITIONS.--As used in the Minimum Wage Act:

A. "employ" includes suffer or permit to work;

B. "employer" includes any individual, partnership,
association, corporation, business trust, legal representative
or any organized group of persons employing one or more
employees at any one time, acting directly or indirectly in the
interest of an employer in relation to an employee, but shall
not include the United States, the state or any political
subdivision of the state; provided, however, that for the

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1 purposes of Subsection A of Section 50-4-22 NMSA 1978,
2 "employer" includes the state or any political subdivision of
3 the state; and

4 C. "employee" includes an individual employed by an
5 employer [~~but shall not include:~~

6 ~~(1) an individual employed in domestic service~~
7 ~~in or about a private home;~~

8 ~~(2) an individual employed in a bona fide~~
9 ~~executive, administrative or professional capacity and~~
10 ~~forepersons, superintendents and supervisors;~~

11 ~~(3) an individual employed by the United~~
12 ~~States, the state or any political subdivision of the state;~~
13 ~~provided, however, that for the purposes of Subsection A of~~
14 ~~Section 50-4-22 NMSA 1978, "employee" includes an individual~~
15 ~~employed by the state or any political subdivision of the~~
16 ~~state;~~

17 ~~(4) an individual engaged in the activities of~~
18 ~~an educational, charitable, religious or nonprofit organization~~
19 ~~where the employer-employee relationship does not, in fact,~~
20 ~~exist or where the services rendered to such organizations are~~
21 ~~on a voluntary basis. The employer-employee relationship shall~~
22 ~~not be deemed to exist with respect to an individual being~~
23 ~~served for purposes of rehabilitation by a charitable or~~
24 ~~nonprofit organization, notwithstanding the payment to the~~
25 ~~individual of a stipend based upon the value of the work~~

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1 ~~performed by the individual;~~

2 ~~(5) salespersons or employees compensated upon~~
3 ~~piecework, flat rate schedules or commission basis;~~

4 ~~(6) students regularly enrolled in primary or~~
5 ~~secondary schools working after school hours or on vacation;~~

6 ~~(7) registered apprentices and learners~~
7 ~~otherwise provided by law;~~

8 ~~(8) persons eighteen years of age or under who~~
9 ~~are not students in a primary, secondary, vocational or~~
10 ~~training school;~~

11 ~~(9) persons eighteen years of age or under who~~
12 ~~are not graduates of a secondary school;~~

13 ~~(10) G.I. bill trainees while under training;~~

14 ~~(11) seasonal employees of an employer~~
15 ~~obtaining and holding a valid certificate issued annually by~~
16 ~~the director of the labor relations division of the workforce~~
17 ~~solutions department. The certificate shall state the job~~
18 ~~designations and total number of employees to be exempted. In~~
19 ~~approving or disapproving an application for a certificate of~~
20 ~~exemption, the director shall consider the following:~~

21 ~~(a) whether such employment shall be at~~
22 ~~an educational, charitable or religious youth camp or retreat;~~

23 ~~(b) that such employment will be of a~~
24 ~~temporary nature;~~

25 ~~(c) that the individual will be~~

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1 ~~furnished room and board in connection with such employment, or~~
2 ~~if the camp or retreat is a day camp or retreat, the individual~~
3 ~~will be furnished board in connection with such employment;~~

4 ~~(d) the purposes for which the camp or~~
5 ~~retreat is operated;~~

6 ~~(e) the job classifications for the~~
7 ~~positions to be exempted; and~~

8 ~~(f) any other factors that the director~~
9 ~~deems necessary to consider;~~

10 ~~(12) any employee employed in agriculture:~~

11 ~~(a) if the employee is employed by an~~
12 ~~employer who did not, during any calendar quarter during the~~
13 ~~preceding calendar year, use more than five hundred man-days of~~
14 ~~agricultural labor;~~

15 ~~(b) if the employee is the parent,~~
16 ~~spouse, child or other member of the employer's immediate~~
17 ~~family; for the purpose of this subsection, the employer shall~~
18 ~~include the principal stockholder of a family corporation;~~

19 ~~(c) if the employee: 1) is employed as~~
20 ~~a hand-harvest laborer and is paid on a piece-rate basis in an~~
21 ~~operation that has been, and is customarily and generally~~
22 ~~recognized as having been, paid on a piece-rate basis in the~~
23 ~~region of employment; 2) commutes daily from the employee's~~
24 ~~permanent residence to the farm on which the employee is so~~
25 ~~employed; and 3) has been employed in agriculture less than~~

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1 ~~thirteen weeks during the preceding calendar year;~~

2 ~~(d) if the employee, other than an~~
3 ~~employee described in Subparagraph (c) of this paragraph:~~
4 ~~1) is sixteen years of age or under and is employed as a~~
5 ~~hand-harvest laborer, is paid on a piece-rate basis in an~~
6 ~~operation that has been, and is generally recognized as having~~
7 ~~been, paid on a piece-rate basis in the region of employment;~~
8 ~~2) is employed on the same farm as the employee's parent or~~
9 ~~person standing in the place of the parent; and 3) is paid at~~
10 ~~the same piece-rate as employees over age sixteen are paid on~~
11 ~~the same farm; or~~

12 ~~(e) if the employee is principally~~
13 ~~engaged in the range production of livestock or in milk~~
14 ~~production;~~

15 ~~(13) an employee engaged in the handling,~~
16 ~~drying, packing, packaging, processing, freezing or canning of~~
17 ~~any agricultural or horticultural commodity in its~~
18 ~~unmanufactured state; or~~

19 ~~(14) employees of charitable, religious or~~
20 ~~nonprofit organizations who reside on the premises of group~~
21 ~~homes operated by such charitable, religious or nonprofit~~
22 ~~organizations for persons who have a mental, emotional or~~
23 ~~developmental disability]."~~

24 Section 2. Section 50-4-22 NMSA 1978 (being Laws 1955,
25 Chapter 200, Section 3, as amended) is amended to read:

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1 "50-4-22. MINIMUM WAGES.--

2 A. An employer shall pay an employee the minimum
3 wage rate of six dollars fifty cents (\$6.50) an hour. As of
4 January 1, 2009, an employer shall pay the minimum wage rate of
5 seven dollars fifty cents (\$7.50) an hour.

6 ~~[B. An employer furnishing food, utilities,~~
7 ~~supplies or housing to an employee who is engaged in~~
8 ~~agriculture may deduct the reasonable value of such furnished~~
9 ~~items from any wages due to the employee.~~

10 ~~C. An employee who customarily and regularly~~
11 ~~receives more than thirty dollars (\$30.00) a month in tips~~
12 ~~shall be paid a minimum hourly wage of two dollars thirteen~~
13 ~~cents (\$2.13). The employer may consider tips as part of~~
14 ~~wages, but the tips combined with the employer's cash wage~~
15 ~~shall not equal less than the minimum wage rate as provided in~~
16 ~~Subsection A of this section. All tips received by such~~
17 ~~employees shall be retained by the employee, except that~~
18 ~~nothing in this section shall prohibit the pooling of tips~~
19 ~~among employees.~~

20 ~~D.]~~ B. An employee shall not be required to work
21 more than forty hours in any week of seven days, unless the
22 employee is paid one and one-half times the employee's regular
23 hourly rate of pay for all hours worked in excess of forty
24 hours. For an employee who is paid a fixed salary for
25 fluctuating hours and who is employed by an employer a majority

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1 of whose business in New Mexico consists of providing
2 investigative services to the federal government, the hourly
3 rate may be calculated in accordance with the provisions of the
4 federal Fair Labor Standards Act of 1938 and the regulations
5 pursuant to that act; provided that in no case shall the hourly
6 rate be less than the federal minimum wage."

7 Section 3. Section 50-4-30 NMSA 1978 (being Laws 1971,
8 Chapter 169, Section 1) is amended to read:

9 "50-4-30. DAILY MAXIMUM HOURS OF EMPLOYMENT--
10 EXCEPTIONS.--

11 A. No employee other than a [~~fireman~~] firefighter
12 or law enforcement officer [~~or farm or ranch hand~~] whose duties
13 require them to work longer hours or employees primarily in a
14 standby position shall be required to work for any employer
15 within the state more than sixteen hours in any one day of
16 twenty-four hours except in emergency situations.

17 B. Any person violating any of the provisions of
18 this [~~act~~] section shall be guilty of a misdemeanor."

19 Section 4. DELAYED REPEAL.--Sections 50-4-23 and 50-4-24
20 NMSA 1978 (being Laws 1967, Chapter 242, Section 1 and Laws
21 1975, Chapter 275, Section 1, as amended) are repealed
22 effective January 1, 2013.

23 Section 5. EFFECTIVE DATE.--The effective date of
24 Sections 1 through 3 of this act is January 1, 2013.